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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 468

BENJAMIN D. RITHOLZ,
Petitioner,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

GOODMAN, CROCKETT, EDEN, ROBB & PHILO,
By ERNEST GOODMAN,
Attorneys for Petitioner,
3220 Cadillac Tower,
Detroit 26, Michigan.

Interstate Brief & Record Co., 642 Beaubien St., Detroit 26, Michigan

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OPINION BELOW

The opinion of the Michigan Supreme Court is reported at 359 Mich. 539 (official advance sheets only). A copy of the opinion is printed as an appendix to this Petition.

JURISDICTION

The opinion of the Michigan Supreme Court was filed on June 6, 1960. Petition for rehearing was denied on July 11, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. par. 1257(3).

QUESTION PRESENTED

Where in a State Prosecution for Bribery, State Officials induced the Defendant to Commit the Offense, Does the Defendant's Conviction Violate the Due Process Clause of the Fourteenth Amendment?

CONSTITUTIONAL PROVISION INVOLVED

The Due Process clause of the Fourteenth Amendment to the Federal Constitution.

STATEMENT OF THE CASE

Petitioner was tried and convicted by a jury in the Circuit Court for the County of Ingham of the criminal offense of bribing officials of the Michigan Board of Examiners in Optometry, and sentenced to serve a prison term of not less than two and not more than four years pursuant to Sec. 117 of Act No. 328, Public Acts of 1931 (C. L. 1948 Sec. 750.117; Mich. Stat. Ann. Sec. 28.312). The Supreme Court of the State of Michigan, in affirming

the conviction and sentence, rejected certain claims of petitioner that, in his arrest and prosecution and in the course of his trial, he was denied rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

More particularly, it is petitioner's position that he was entrapped into making the "bribe" for which he was convicted by State officials and, hence, that petitioner's conviction denied him due process of law.

Petitioner's conviction, and the question of entrapment by State officials in this case as a violation of due process, rests primarily on the testimony of Dr. Julian A. Feiler, a member of the State Board of Examiners in Optometry from 1951-1955, to the effect that petitioner had on several occasions between November 1954 and August 1955, attempted to influence by bribery, Feiler's action as a Board member. Petitioner conceded that money changed hands between Feiler and petitioner on August 8, 1955, but only as a result of efforts by Feiler and other state officials to entrap petitioner by threatening him with economic reprisals in order to induce petitioner to make the bribe. This statement of facts will examine the testimony of Dr. Feiler and other state witnesses to establish that petitioner was entrapped by State officials in violation of the due process clause of the Fourteenth Amendment.

The entrapment of petitioner by State officials arose out of a five year relationship between petitioner and Dr. Feiler. A fair appraisal of petitioner's claim of entrapment in this case requires a full exposition of the evidence relative to that association.

Petitioner Benjamin D. Ritholz, a resident of Chicago, Illinois for the past fifty years, owned and operated optical

supply and lens grinding businesses throughout the United States; in Michigan petitioner has done business for more than ten years through the King Optical Company, a partnership of which petitioner was a partner.

The King Optical Company, (hereinafter referred to as King, with offices in several Michigan cities including Lansing, grinds lenses for eyeglasses for its customers pursuant to prescriptions issued by licensed optometrists. King is not licensed to prescribe glasses nor to treat eye diseases.

Dr. Feiler is a resident of the City of Flint, Michigan, and licensed to engage in the practice of optometry. In November, 1951, Governor G. Mennen Williams appointed Dr. Feiler to the five member State Board of Examiners in Optometry (hereinafter referred to as the Board), an independent State regulatory agency charged with the duty of regulating and licensing the profession of optometry in Michigan, and invested with broad powers of investigation and license suspension and revocation.[1]

Drs. Chauncey Howe and Clare L. Grigware are licensed and practicing optometrists, and also members of the Board. Members of the Board are appointed and removable for cause by the Governor and selected from optometrists licensed by the State of Michigan, many of whom, including Board members, are in direct competition with optometrists who prescribe glasses fabricated by King (P. App. 138a, 148a).[2]

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[1] Mich. Stat. Ann. Oct. 71 Pub. Acts 1909; Mich. Stat. Ann. Sec. 14.641, *et seq.*

[2] References to. App. —— are to pages of the printed Appellant's Appendix filed with the Michigan Supreme Court, which is a part of the certified record in this Court. Appellee also filed an appendix, which is also a part of the certified record.

In September 1954, charges were filed by the Board against Dr. Edwin L. Sanchick, an optometrist with offices at Lansing, Michigan on the ground that:

> "* * * (he) has been guilty of grossly unprofessional, unethical and dishonest conduct of a character likely to deceive the public, in that he has employed the King Optical Company as a 'capper' or 'steerer' to obtain business; and that said King Optical Company, by its employee and agent did on the 17th day of August, A. D. 1954 send this complainant to the said licensee, Edwin L. Sanchick, for a perscription for glasses."

Following hearings held before the Board upon these charges an order was issued in October, 1955, suspending Dr. Sanchick's license.[3]

Petitioner's conviction arose out of an association with Dr. Feiler begun after the inception of King operations in Michigan, but before Dr. Feiler's appointment to the Board and before Dr. Feiler's participation in the revocation of the license of Dr. Sanchick. Petitioner was convicted for corruptly offering Six Thousand ($6,000.00) Dollars to three members of the Board—Drs. Feiler, Grigware and Howe—and by paying them One Hundred ($100.00) Dollars each, with intent to influence their processing of the Sanchick complaint (App. 6a).

Petitioner's first contact with Dr. Feiler came in 1949 or 1950 at which time petitioner responded to an advertisement by Feiler for the sale of certain optical equipment (App. 175a). Feiler came to petitioner's place of business in Chicago to discuss the sale, and petitioner sent his

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[3] The Michigan Supreme Court eventually reversed this order of revocation in February 1957 on the ground that it was not supported by the evidence. *In Re Sanchick*, 347 Mich. 620.